IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 12TH DECEMBER 2006 / 21ST AGRAHAYANA 1928

Crl.Rev.Pet.No. 4222 of 2006(C)

CRA.339/2004 of SESSIONS COURT, PATHANAMTHITTA
CC.367/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, PATHANAMTHITTA
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REVN. PETITIONER/APPELLANT/ACCUSED:

RAMACHANDRAN,
PARUTHIKAVIL HOUSE, MANGARAM MURI, KONNI.

BY ADV. SRI. V. PHILIP MATHEW

RESPONDENTS/RESPONDENTS/COMPLAINANT:
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1. **RAJU DANIEL,**
   MELOOTU VEEDU, KUMMANNOOR, IRAVON MURI, KONNI.

2. **THE STATE OF KERALA,**
   REP. BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

   BY PUBLIC PROSECUTOR SRI. C.M. KAMMAPPU.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 12/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. HEMA, J.

CRL.R.P. No. 4222 OF 2006

Dated this the 12th day of December, 2006.

O R D E R

This revision petition is filed challenging the legality and propriety of dismissing an appeal by the Sessions Court without going into the merits of the appeal.

2. The revision petitioner is an accused in C.C. 367/2003 on the file of Judicial First Class Magistrate - II, Pathanamthitta. The offence alleged against him is under Section 138 of the Negotiable Instruments Act. He was convicted and sentenced for offence under Section 138 of the Act. Challenging the conviction and sentence, he filed an appeal before the Sessions Court, Pathanamthitta.

3. As per the impugned order, the learned Sessions Judge observed that, inspite of repeated direction, correct address of the respondent was not furnished. Therefore, no notice could be issued. Without hearing the respondent, according to learned Sessions Judge, the correctness of the order of the learned Magistrate could not be examined in depth. The lower court also observed that the conduct of the appellant shows that the

findings of the court below are legal and correct. These are the reasons for dismissing the appeal.

4. I find that none of the reasons are sustainable. The conduct of the appellant can never lead to a conclusion that the findings of the court below are legal and correct. The legality or correctness of the findings of a court does not depend upon the conduct of the appellant or any party. It is also to be noted that, as per the dictum laid down in the decision reported in ***Jayasankar V.R vs. K.G. Dharman and another*** **(2006(4) ILR 596)**, the provision contained in Section 204(4) of Cr.P.C is not available in the case of appeals. The appeals have to be disposed of on merit, applying the dictum laid down in the said decision. The order under challenge is legally unsustainable and hence it is set aside.

5. Since the respondent-complainant has not entered appearance before the appellate court and no notice has been issued to him, I find that for the disposal of this revision petition notice to him is not necessary. I heard the learned Public Prosecutor in this matter and it is taken for disposal.

In the result, the impugned order is set aside. The matter is remanded to the court below for fresh consideration and disposal in accordance with law, in the light of the dictum cited in this judgment.

This revision petition is allowed.

K. HEMA, JUDGE

smp